IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1257

DONALD SCHRIVER, INC., SULLIVAN-KELLEY & ASSOCIATES, TOPAZ CONTRACTING & DEVELOPMENT COMPANY, INC., and SULLIVAN AND ASSOCIATES,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

MOTION FOR LEAVE TO FILE AS AMICUS CURIAE AND BRIEF OF AMICUS CURIAE CENTER ON NATIONAL LABOR POLICY IN SUPPORT OF PETITION FOR WRIT OF *CERTIORARI*

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MOTION OF *AMICUS CURIAE* CENTER ON NATIONAL LABOR POLICY FOR LEAVE TO FILE BRIEF IN SUPPORT *OF THE PETITION OF SCHRIVER-TOPAZ*

Center on National Labor Policy hereby respectfully moves pursuant to this Court's Rule 36 for leave to file its brief *amicus curiae* in support of the petition of Donald Schriver, Inc., et. al. Consent was sought from all parties and received from Petitioners and Respondent. Consent from Intervenor unions in the case below, has not been confirmed. All these documents have been filed with the Clerk.

The accompanying brief urges this Court to reverse the holding of the United States Court of Appeals in *Donald Schriver, et. al.* v. *NLRB, et. al,* No. 79-1001 (D.C. Cir. Oct. 20, 1980).

Center on National Labor Policy is a national non-profit, non-partisan organization, chartered as a public interest legal foundation to engage in national litigation in matters affecting the public interest. Among its objectives, the Center is concerned about the impact of pressure groups on the civil rights of the public, consumers, taxpayers, and workers. Private pressure groups, such as organized labor groups, have a history of significant impact on the rights of the public, consumers, taxpayers, and workers. As this Court recognized in *Connell Const. Co.* v. *Plumbers and Steamfitters Local No. 100,* 421 U.S. 616, 625 (1975), union pressure "could result in significant adverse effects on the market and on consumers . . ." When organized labor pressure is supported by administrative policy, as in the case at bar, significant questions are raised concerning the civil rights of other affected parties: the public, consumers, taxpayers, and workers.

The Center, as a public interest organization, believes that the individual rights of consumers, taxpayers, workers, and public citizens are paramount to collective rights of pressure groups such as labor unions. Where administrative policy gives an advantage to a private association engaged in coercive activity through economic sanctions, the agency is answerable for the impact on the rights of individuals.

Because Center on National Labor Policy can bring to this case a diverse perspective not presently represented, the Center's participation can assist the Court in obtaining full consideration of public interest issues.

Accordingly, Center on National Labor Policy respectfully requests leave to file the annexed brief *amicus curiae.*

Respectfully submitted,

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February 18, 1981

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BRIEF OF CENTER ON NATIONAL LABOR POLICY AS AMICUS CURIAE IN SUPPORT OF THE PETITION OF SCHRIVER-TOPAZ

INTEREST OF AMICUS

Center on National Labor Policy is a national non-profit, non-partisan organization, chartered as a public interest legal foundation to engage in national litigation in matters affecting the public interest. Among its objectives, the Center is concerned about the impact of pressure groups on the civil rights of the public, consumers, taxpayers, and workers.

When organized labor pressure is supported by a state policy of benefits to pressure group members, significant Con-

stitutional questions are raised concerning the individual rights of other affected parties. The Center, as a public interest organization, believes that individual rights of consumers, taxpayers, workers, and public citizens should be paramount to the collective privileges of pressure groups such as labor unions. Where administrative action undergirds the coercive power of such groups, the impact on the public interest may be substantial. Consequently, the Center's concerns about this impact are significant.

Further background and interests of amicus have been detailed in the preceding motion for leave to file this brief.

INTRODUCTION

Schriver and Topaz engage in construction work as general contractors and builders. Each hires their own employees and none of their workers have ever been represented by any union, nor has any union sought recognition of Schriver's or Topaz's employees. (Pet.-5). As stipulated in the record, neither Carpenters Local 1752 nor Carpenters Local 1497 have ever tried to organize the workers of either employer. Both Schriver and Topaz subcontract work out to union and non-union subcontractors, awarding the jobs based on competitive bidding. Because of Local 1497's threats of secondary pressure and Local 1752's illegal picketing, Schriver and Topaz were forced to sign pre-hire agreements excluding non-union subcontractors from obtaining any of their work. The agreements effectively precluded continued employment of Schriver-Topaz workers, so long as they remained non-union.

The agreement, on its face, applies whether or not the signatory union's members are at work at the particular site. Instead of supporting industrial stability as the mainstay of federal labor law policy, the Court of Appeals has undermined this policy by affording unions engaged in the construction industry an unlimited weapon with which to create labor strife at construction jobsites. The result of the District of Columbia Circuit's decision is to validate "top-down organizing," an unintended extension of federal labor law.

ARGUMENT

I. COERCED PRE-HIRE AGREEMENTS ARE UNPROTECTED BY §8(e) OF THE NATIONAL LABOR RELATIONS ACT

A. THE COURT OF APPEALS HAS REJECTED THIS COURT'S PROHIBITION IN *CONNELL* AND THEREBY VALIDATED ILLEGAL TOP-DOWN ORGANIZING

In *Connell Const. Co., Inc.* v. *Plumbers Local No. 100,* 421 U.S. 616 (1975), this court held that prehire agreements which limit subcontracting of construction work to only union subcontractors are not protected under the National Labor Relations Act, 29 U.S.C. §158 ("NLRA"), but rather are federal antitrust violations. In reaching this decision, this Court canvassed the legislative history of §8(e) of the NLRA, 29 U.S.C. §158(e).

The court noted:

> The purpose of the §8(e) proviso was to alleviate the frictions that may arise when union men work continuously alongside non-union men on the same construction site.

Drivers Local 695 v. *NLRB,* 361 F.2d 547, 553 (D.C. Cir. 1966). It was not the purpose of §8(e) to allow the employer to choose his employees' bargaining representative.

Indeed, one of the major aims of Congress in passing the Landrum-Griffin amendments to Taft-Hartley was to limit "top-down" organizing campaigns that forced employers to recognize a union regardless of the wishes of their employees. *See* II *Legislative History of the LMRDA,* 1175-1176, 1191-92, 1523 (1959). The Court in *Connell* recognized the potential for abuse if §8(e) agreements were allowed to be made and enforced through coercive tactics, regardless of the wishes of employees. This court stated:

> These careful limits on the economic pressure unions may use in aid of their organizational compaigns would be undermined seriously if the proviso to §8(e) were con-

> strued to allow unions to seek subcontracting agreements, at large, from any general contractor vulnerable to picketing. Absent a clear indication that Congress intended to leave such a glaring loophole in its restriction on "top-down" organizing . . . we think its [§8(e)] authorization extends only to agreements in the context of collective bargaining relationships and in light of Congressional references to the *Denver Building Trades* problem, possibly to common-situs relationships on particular jobsites as well.

421 U.S. at 633.

Misinterpreting this Court's language in *Connell*, the District of Columbia Circuit has now validated top-down organizing by upholding the coerced agreement signed by Schriver and Topaz.

The D.C. Circuit seems to ignore this Court's clear language in *Connell*. Instead of requiring Locals 1752 and 1497 to be engaged in a collective bargaining relationship or at least be attempting to establish one, the court below held the mere unilateral *attempt* to force a general contractor to sign a pre-hire agreement is sufficient to establish a collective bargaining relationship. (See Pet. 28-a). The Court of Appeals, however, managed to overlook the critical fact that Local 1752 and 1497, just like the union in *Connell, never* represented or attempted to represent either Schriver's or Topaz's employees. Instead, through the use of a pre-hire agreement, the union has succeeded in avoiding the wishes of Schriver's and Topaz's employees. The "touchstone" of a §8(e) agreement or its maintenance is that it is addressed to the labor relations of the employer "vis-a-vis his own employees." *National Woodwork Mfrs. Ass'n* v. *NLRB*, 386 U.S. 612, 644-45 (1967).

The Court of Appeals recognized the danger, but rather than discussing the interrelationship between connecting sections of the NLRA, summarily dismissed the application of prehire agreements as unfair labor practices through §8(b)(4)(b). (Pet. 22-a). Clearly, this is top-down organizing at its worst. When the unions threatened and picketed to force Schriver and Topaz to sign these agreements, they committed an unfair labor practice.

> It is an unlawful labor practice under §8(b) (4) of the NLRA, 29 USCA §158(b) (4), for a labor union to indulge in secondary boycotting practice by inducing a person to refuse to perform any services where an object thereof is to force one employer to cease doing business with another employer, or to force an employer *to recognize a labor union* as the representative of his employees unless such labor union is the legal representative of such employees.

Texas Distrib., Inc. v. *Local 100,* 598 F.2d 393, 398 (5th Cir. 1979) (emphasis added).

B. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH DECISIONS IN THE SECOND, THIRD, FIFTH, SIXTH, SEVENTH, EIGHTH, AND NINTH CIRCUITS

The cases in the circuits listed above have interpreted this Court's decision in *Connell* and lined up on both sides of the decision of the District of Columbia Circuit. The decisions have taken hold of various sub-elements of the two-element test (particular jobsite-collective bargaining relationship) for prehire agreements under *Connell,* and have either supported this Court and its policy decisions, or stretched the *Connell* decision beyond recognition.

1. A Collective Bargaining Relationship Presupposes Employee Support.

The critical conflict among the cases centers on what prerequisites are needed to establish a collective bargaining relationship. The District of Columbia Circuit expressly disagreeing with the Ninth Circuit in *Pacific Northwest Chapter* v. *NLRB,* 609 F.2d 1341 (9th Cir. 1979), has stated that the mere attempt to establish a prehire agreement is sufficient to create a collective bargaining relationship. (Pet. 37-a). Cases holding contra to this theory are: *NLRB* v. *Iron Workers, Local 103,* 434 U.S. 335 (1978); *NLRB* v. *Int'l Bhd. Elect. Wrkrs., Local 265,* 604 F.2d 1091 (8th Cir. 1979); *Texas Distrib., Inc.* v. *Local 100,* 598 F.2d 393 (5th Cir. 1979); *Lail* v. *C & R Constr. Co.,* Civ. No. 1-80-52 (E.D. Tenn. Jan. 26, 1981); *UMWA* v. *Otis*

Elevator Co., 491 F. Supp. 496, (W.D. Pa. 1980); *Washington Area Carpenters Welfare Fund* v. *Overhead Door Co.*, 488 F.Supp. 816 (D.D.C. 1980); *Squillacote* v. *Racine Bldg. & Const. Trades*, 483 F.Supp. 1218 (E.D. Wis. 1980)[1]; *Long* v. *Floorcraft Carpet Co.*, 82 Lab. Cas. 16151 (D. Ore. 1977). *Cf. Contractors, Laborers, Teamsters & Engineers, Health & Welfare Plan* v. *Associated Wreckers*, No. 80-1191 (8th Cir. Jan. 21, 1981); *In re Bullard Contracting Corp.*, 464 F. Supp. 312 (W.D. N.Y. 1979). The establishment of a collective bargaining relationship, as the first prong of the *Connell* test, is crucial to the validity of a §8(e) exemption because such a relationship assures that workers' rights have not been overlooked.

On the issue of whether subsequent majority status is needed to enforce a prehire agreement, the following courts have held that a pre-hire agreement is only a preliminary step to the creation of a collective bargaining relationship and majority status is legally required to enforce such an agreement: *NLRB* v. *Iron Workers, Local 103*, 434 U.S. 335 (1978); *NLRB* v. *Int'l Bhd. Elect. Wrkrs., Local 265*, 604 F.2d 1091 (8th Cir. 1979); *Lail* v. *C & R Constr. Co.*, Civ. No. 1-80-52 (E.D. Tenn. Jan. 26, 1981) *UMWA* v. *Otis Elevator Co.*, 491 F. Supp. 496 (W.D. Pa. 1980); *Washington Area Carpenters Welfare Fund* v. *Overhead Door Co.*, 488 F. Supp. 816 (D.D.C. 1980); *Squillacote* v. *Racine Bldg. & Const. Trades*, 483 F. Supp. 1218 (E.D. Wis. 1980). The intent to gain majority status is important because once majority status is achieved, and only then, a collective bargaining relationship is established.

Courts holding majority status is not needed to enforce the agreement are: the District of Columbia Circuit in the instant case and *Landscape Specialities, Inc.* v. *Laborers Int'l, Local 806*, 477 F. Supp. 17 (C.D. Ca. 1979). *See also Contractors, Laborers, Teamsters & Engineers, Health & Welfare Plan* v. *Associated Wreckers*, No. 80-1191 (8th Cir. Jan. 21, 1981)

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[1] On July 9, 1980, subsequent to the decision in *Squillacote* v. *Racine Building & Const. Trades*, 483 F. Sup. 1218 (E.D. Wis. 1980), the Board gave its approval to a consent decree which essentially embodied the terms of that court's temporary restraining order. This Board decision, at least impliedly, shows a reversal of its decision in *Schriver-Topaz*.

(Eighth Circuit reverses itself in one year). *See NLRB* v. *Int'l Bhd. Elect. Wrkrs., Local 265,* 604 F.2d 1091 (8th Cir. 1979).

The following courts have stated that building and trade unions cannot use coercive letters, threats or picketing to obtain pre-hire agreements from general contractors: *NLRB* v. *Iron Workers, Local 103,* 434 U.S. 335 (1978); *Larry Muko, Inc.* v. *Southwestern Pennsylvania, Building and Trades Council,* 609 F.2d 1368 (3rd Cir. 1979) *Pacific Northwest Chapter* v. *NLRB,* 609 F.2d 1341 (9th Cir. 1979); *NLRB* v. *Int'l Bhd. Elect. Wrkrs., Local 265,* 604 F. 2d 1091 (8th Cir. 1979); *Texas Distrib., Inc.* v. *Local 100,* 598 F.2d 393 (5th Cir. 1979); *UMWA* v. *Otis Elevator Co.,* 491 F. Supp. 496 (W.D. Pa. 1980). The legislative history to §8(f) stresses that pre-hire agreements must be voluntary. *See* 104 Cong. Rec. 11308 (July 16, 1958). In addition, one court has held that a pre-hire agreement is not valid absent voluntary consent. *UMWA* v. *Otis Elevator Co.,* 491 F. Supp. 496, 499 (W.D. Penn. 1980).

Only the District of Columbia Circuit in the instant case and *Landscape, supra,* have held that letters or picketing are legal union activity. However, *Landscape* is at least impliedly reversed by *Pacific Northwest Chapter* v. *NLRB,* 609 F.2d 1341 (9th Cir. 1979).

On the issue of whether common situs friction was the overriding concern of Congress in legislating the 8(e) provisio, the following circuits have stated that it is controlling; *Larry Muko, Inc.* v. *Southwestern Pennsylvania, Building and Trades Council,* 609 F.2d 1368 (3rd Cir. 1979); *Pacific Northwest Chapter* v. *NLRB,* 609 F.2d 1341 (9th Cir. 1979); *Texas Distrib., Inc.* v. *Local 100,* 598 F.2d 393 (5th Cir. 1979); *Squillacote* v. *Racine Bldg. & Const. Trades,* 483 F.Supp. 1218 (E.D. Wis. 1980). Only the District of Columbia Circuit and one district court have found the common situs friction argument unpersuasive. *See In re Bullard Contracting Corp.,* 464 F. Supp. 312 (W.D. N.Y. 1979).

Whether prehire agreements should be restricted to a particular jobsite and to the signatory union, cases in the Ninth and Seventh Circuits have held in the affirmative. *Pacific*

Northwest Chapter v. *NLRB,* 609 F.2d 1341 (9th Cir. 1979); *Squillacote* v. *Racine Bldg. & Const. Trades,* 483 F.Supp. 1218 (E.D. Wis. 1980). Only the District of Columbia Circuit, using the instant case as a vehicle, has held that prehire agreements need not contain job situs limitations. (Pet 46-a). The second prong to the *Connell* test requires that pre-hire agreements be limited to a particular jobsite.

2. Jobsite Restriction Insures Recognition of Employee Rights.

In *Squillacote* v. *Racine Bldg. & Const. Trades,* 483 F.Supp. 1218 (E.D. Wis. 1980), a local trades council attempted to force a general contractor, by picketing the jobsite, to agree to subcontract to employers who had an agreement with the trades council. The NLRB's regional counsel filed a complaint in District Court alleging unfair labor practice charges under §8(b)(4) of the NLRA. Like the union's action in this case, the object of the picketing was to force the general contractor to bring pressure on subcontractors to sign agreements with the trades council.

The *Squillacote* court stated:

> This court is satisfied that the agreement here was not "in the context of a collective-bargaining relationship" ... Respondents (the union) were not, nor were they in contemplation of becoming, the collective bargaining representative of any A.R.S. (the general contractor's) employees.

483 F.Supp. at 1222.

As noted in *Connell,* §8(e) agreements must be limited to a particular jobsite. On its face, the agreement which Schriver and Topaz were coerced to sign was not limited to a particular jobsite. The D.C. Court of Appeals dismisses this critical second prong to §8(e) validity by stating:

> Accordingly, we hold that the subcontracting agreements in the present case did not violate §8(e) by reason of the fact that the clauses did not need to be renegotiated on each

> individual jobsite, or because the clauses were not limited to particular jobsite at which signatory union workers were already employed.

(Pet. 47-a)

The *Squillacote* court found the union's agreement extended to all jobsites within the trade council's jurisdiction and since the agreement did not limit itself to " 'special problems' inherent in a common-situs relationship on a particular jobsite" the court struck down the agreement as violative of §8(e). 488 F. Supp. at 1222.

Moreover, the Third Circuit has also held that §8(e) agreements are not valid unless they are restricted to a particular jobsite and made within the context of a collective bargaining relationship.

The court in *Larry Muko, Inc.* v. *Southwestern Pennsylvania Building and Trades Council,* 609 F.2d 1368 (3rd Cir. 1979), expressly stated:

> *Connell* is controlling on the question whether that agreement was protected by the construction industry proviso, for here there is neither a collective bargaining relationship with Silver's nor any evidence of a common-situs problem.

609 F.2d at 1375.

In *Muko,* Long John Silver, a restaurant builder, contracted with Muko, a non-union subcontractor, to build a restaurant. Under pressure from the local trades council (which resulted from handbilling once the restaurant opened), Silver subsequently cancelled their contract to build ten more restaurants, even though Muko's bid was $225,000 less than any other subcontractor. The trade council in *Muko,* like the Locals here, not only attempted to, but succeeded in forcing Silver to "cease doing business with" Muko. The Third Circuit held the agreement to be subject to antitrust laws, but clearly indicated that §8(e) agreements are only valid if made in the context of a collective bargaining relationship and restricted to

a particular jobsite. Using *Connell* as controlling precedent, this court stated:

> [t]he Court held that the construction industry proviso was not intended to authorize subcontracting agreements that are neither within the context of collective bargaining relationship nor limited to a particular jobsite.

609 F.2d at 1374-75.

Finally, the Ninth Circuit, in direct conflict with the District of Columbia Circuit's subsequent holding, agreed with *Muko* and this Court in *Connell.* In *Pacific Northwest Chapter* v. *NLRB,* 609 F.2d 1341 (9th Cir. 1979), a case which parallels the facts present here, the Ninth Circuit held:

> [t]hat the construction industry provisio extends shelter only when a collective bargaining relationship exists and even then only when the employer or his subcontractor has employees who are members of the signatory union at work at some time at the jobsite at which the employer wishes to engage a non-union subcontractor.

609 F.2d at 1347.

Clearly, this holding, which more closely traces *Connell, supra,* is the more honest imterpretation of *Connell.* It recognizes what Congress meant to achieve by providing an exception to the general prohibition on "hot cargo" agreements. "Hence, the purpose of the exception dictates its scope." 609 F.2d at 1350.

The District of Columbia Circuit goes to great pains to fashion what it perceives to be the history of collective bargaining in the construction industry. However, "In 1959, when Section 8(e) was enacted, the lawfulness and permissible scope of subcontractor agreements had not been conclusively determined." *Pacific Northwest Chapter* at 1348. "The potential coercive effect of such a provision is manifest. The clause is precisely the kind of instrument for 'top-down' organizing which the Supreme Court condemned in *Connell.*" 609 F.2d at 1350.

Top down organizing is an evil recognized and prohibited by Congress. The Supreme Court cannot allow this degradation of workers' right to be free to choose. For these reasons, and in order to set to rest the conflicts within the District of Columbia, Third, Fifth, Sixth, Seventh and Ninth Circuits, this Court should grant the Writ of Certiorari.

C. THE D.C. CIRCUIT HAS BRASHLY IGNORED AND CAST ASIDE EMPLOYEE RIGHTS TO CHOOSE THEIR BARGAINING REPRESENTATIVE.

The greatest misfortune of the D.C. Circuit's holding is the absolute disregard of workers' legitimate statutory right to choose their own representative. As the court in *Pacific Northwest Chapter* v. *NLRB*, 609 F.2d 1341, 1350 (9th Cir. 1979), correctly recognized, "[A] union signatory subcontractor clause operates to force non-union firms and their employees to submit to union representation in order to be eligible for subcontracting opportunities, thus undermining the rights established in Section 7."

According to the agreement between Schriver, Topaz, Local 1752 and 1497, only union subcontractors would be allowed to bid for work in the jurisdiction of the Trades Council. This restriction violates worker's rights to be free to choose their own collective-bargaining representative. §7 of the NLRA, 29 U.S.C. §157, states:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall have the right to refrain from any and all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a) (3) of this title.

Clearly, Congress never intended the pre-hire agreement allowed by §8(f) of the NLRA to abrogate this statutory right, unless the workers surrender their right voluntarily. *NLRB* v.

Iron Workers, Local 103, 434 U.S. 335, 349 n. 10 (1978) ("no element of coercion was to be admitted into the narrow exception being established to the majority principle."); *UMWA* v. *Otis Elevator Co.,* 491 F. Supp. 496, 499 (W.D. Pa. 1980) (lack of voluntary consent abrogates agreement).

Although Congress went to great lengths to accomodate special interests of employers and unions in the construction industry, it never intended to "portray" the convenience as an expression of employee choice. *NLRB* v. *Iron Workers, Local 103,* 434 U.S. 335, 350 (1978); *Larry Muko, Inc.* v. *Southwestern Pennsylvania, Building and Trades Council,* 609 F.2d 1368, 1376 (3rd Cir. 1979) (an employer may not coerce his employees into a collective bargaining relationship, even for the purpose of avoiding economic injury, 29 U.S.C. §158(a)(1)).

The right to bargain collectively was given to employees, not to unions who independently decide to intervene at the jobsite. Section 8(f), 29 U.S.C. §158(f), does not override workers' rights of self-determination. *Pacific Northwest Chapter* v. *NLRB,* 609 F.2d 1341, 1350 (9th Cir. 1979).

In remarks made on the floor of the Senate, Senator John F. Kennedy stated:

> It was not the intention of the committee to require by [§8(f)] the making of prehire agreements, but rather, *to permit* them, nor was it the intention of the committee to authorize a labor organization to strike, picket, or otherwise coerce an employer to sign a prehire agreement where the majority status of the union had not been established. The purpose of this section is to permit voluntary prehire agreements.

104 *Cong. Rec.* 11308 (July 16, 1958).

In the face of clear legislative history to the contrary and the Supreme Court's recent decision in *NLRB* v. *Iron Workers, Local 103,* 434 U.S. 335 (1978), the Court of Appeals has wrongfully raised the pre-hire agreement to the status of a collective bargaining agreement. Under the D.C. Circuit's view, an §8(f) agreement is sufficient to establish a collective

bargaining relationship. They hold to this position even though these agreements can be terminated by either party at will, *Eastern District Council* v. *Blake Construction Co.*, 457 F.Supp. 825 (E.D. Va. 1978), are not enforceable until the union gains majority status, *Contractors, Laborers, Teamsters & Engineers, Health & Welfare Plan* v. *Associated Wreckers,* 484 F.Supp. 582 (D. Neb. 1980) (*rev'd, Contractors, Laborers, Teamsters & Engineers, Health & Welfare Plan* v. *Associated Wreckers,* No. 80-1191 (8th Cir. Jan. 21, 1981); *Washington Area Carpenters Welfare Fund* v. *Overhead Door Co.*, 488 F.Supp. 816 (D.D.C. 1980) and are "merely a preliminary step that contemplates further action for development of a full bargaining relationship." *Ruttman Construction Co.*, 191 NLRB 701, 702 (1971). *See also: NLRB* v. *Iron Workers, Local 103,* 434 U.S. 335 (1978); *NLRB* v. *Int'l Bhd. Elect. Wrkrs., Local 265,* 604 F.2d 1091 (8th Cir. 1979); *Lail* v. *C & R Constr. Co.*, Civ. No. 1-80-52 (E.D. Tenn. Jan. 26, 1981); *UMWA* v. *Otis Elevator Co.*, 491 F. Supp. 496, (W.D. Pa. 1980); *Squillacote* v. *Racine Bldg. & Constr. Trades,* 483 F. Supp. 1218 (E.D. Wis. 1980).

A pre-hire agreement cannot substitute for lawful recognition or certification of a union. To allow the coerced pre-hire agreement to become such a substitute for the purpose of meeting the *Connell* test that allows §8(e) agreements only in the context of collective bargaining is to effectively deny the existence of the employees' statutory and First Amendment right to choose. *NLRB* v. *Iron Workers, Local 103,* 434 U.S. 335, 350 (1978); *Garment Workers* v. *NLRB,* 366 U.S. 731, 737 (1961). In this case, the D.C. Circuit's usurpation of employee rights is even more egregious because neither Local 1752 or 1497 was the least bit interested in organizing the employees of Schriver or Topaz. (Stipulated facts Pet. 5)

CONCLUSION

That concept of national labor policy which promotes freedom of choice by the worker is sometimes reflexively misconstrued to promote unionism over voluntary non-unionism. To the extent that a government would step into the workplace and makes the choice for the worker, the Constitution stands as a bar. This Court must safeguard employee associational rights against encroachment by inconsistent and overbroad extensions undermining its own precedent. For these reasons, the Center on National Labor Policy respectfully requests this Court grant the Petition for Writ of Certiorari and reverse the decision of the Court of Appeals.

Respectfully submitted,

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